IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

APPEAL NO.838 OF 1998
IN
NOTICE OF MOTION NO.3225 OF 1996
IN
SUIT NO.3072 OF 1995

1. Salmabai F. Lokhandwala,
   an Indian Inhabitant of Bombay,
   residing at Fatma Building, 1st floor,
   New Mill Road, Kula, Bombay-400 070.
2. Smt. Jenabbai K. Daruwalla,
   an Indian Inhabitant of Bombay,
   residing at Daruwalla Chawl,
   New Mill Road, Bazar Ward,
   Kurla, Bombay-400 070. ...Appellants.

Vs.

1. Smt. Zubedabai Saifuddin Suratwala,
   an Indian Inhabitant, of Bombay,
   residing at Room No.4, Ground Floor,
   228-B, Daruwalla Chawl,
   New Mill Road, Bazar Ward,
   Kurla, Bombay-400 070.
2. Kutubuddin Karimbhai Daruwalla,
   since deceased, by his legal heirs -
   (a) Smt. Mariambai Kutubuddin
   Daruwalla, an Indian Inhabitant
   of Bombay, residing at 228,
   Daruwalla Building, 2nd Floor,
   Bazar Ward, Kurla, Bombay-400 070.
   (b) Smt. Masuma Mohemmadbhai Gandhi,
   Block No.12-04-05, Kampong,
   Anang Road, Singapore-1543.
3. Jainuddin Karimbhai Daruwalla,
   an Indian Inhabitant of Bombay,
   residing at 228, Daruwalla Chawl,

Bazar Ward, Kurla, Bombay-400 070.
4. Namabai Jainuddin Karimbhai Daruwalla,
adult, Indian Inhabitant, residing at
228, Daruwalla Chawl, Bazar Ward,
Kurla, Bombay-400 070. ...Respondents.

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Smt. S. R. Sawant i/b. Shri G.K. Masand for the appellants.
None for the respondents.

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CORAM : R. M. S.KHANDEPARKAR &
DR.D.Y.CHANDRACHUD, JJ.

January 25, 2007.

ORAL JUDGMENT (Per R.M.S. KHANDEPARKAR, J.) :

Heard the learned Advocate for the appellants. None for the Respondent.

2. The appeal arises from the order dated 18th June 1998 passed in Notice of Motion No.3215 of 1995 in Suit No.3072 of 1995. By the impugned order, the Learned Single Judge while allowing the Notice of Motion in the said proceedings has observed that no separate order is necessary in Motion No.3225 of 1996. The challenge to the impugned order is that though she has no grievance against the impugned order as far as it allows Notice

of Motion No.3215 of 1995, no separate order was passed in her Notice of Motion No.3225 of 1996. The operative portion of that impugned order reads thus :

"ORDER

There shall be an order in terms of prayer (b), except the words "dealing with", in respect of the properties at items Nos.1 and item No.3 of Exh.'E' to the plaint.

Defendants Nos.1 & 2 are directed to deposit in this Court, an amount of Rs.6 lakhs from the proceeds under the agreement of sale pertaining to property at serial No.2(i) and 2(ii) of Exh.'E'.

The receiver, High Court, shall stand appointed as Receiver in respect of the property at items Nos.2(i) and 2(ii) with consequential rights to collect rent from the property. Agency agreement shall stipulate that the agent shall be under obligation to maintain account of receipt of rent from the chawls, which are existing on suit property. While fixing the royalty, the Receiver shall keep in mind the fact that the property is tenanted property occupied by the tenants and shall take into account the quantum of rent that is being paid to the agent.

Motion in respect of property at items Nos.1, 3, 4 & 5 is dismissed.

In view of the order passed in the present motion in motion No.3215/95, no separate order is necessary in the motion No.3225/95 taken out by the Defendants Nos.3 & 4 and same shall dispose of in terms of the order in Motion No.3215/95. Motion disposed of accordingly. No order as to costs.

Certified copy expedited."

The relief that was prayed for in Notice of Motion No.3225 of 1996 by the appellants was for the appointment of Court Receiver and for the relief of temporary injunction against Defendant Nos.1A, 1B and 2 and for direction to the same defendants to deposit an amount of Rs.13 lakhs in the Court during the pendency and the disposal of the suit.

3. The plain reading of the impugned order discloses that the Notice of Motion which was taken out by the appellants has been dealt with by the Learned Single Judge while deciding Notice of Motion No.3215 of 1995. As regards the direction to deposit an amount of Rs.6 lakhs instead of Rs.13 lakhs, the Learned Single Judge has clearly observed that the direction in that regard is restricted to the sum of Rs.6 lakhs as it relates to the share of the concerned party in the matter.

4. Factually the relief which was asked for by the appellants

in Notice of Motion No.3225 of 1996 based on the grievance made in the said Notice of Motion has been dealt with in the impugned order and has also disclosed the justification for issuing direction to deposit of Rs.6 lakhs instead of Rs.13 lakhs. In this view of the matter, as what the appellants sought to be raised in Notice of Motion 3225 of 1996 having been dealt with in the impugned order as also the relief asked for in the Notice of Motion having been considered and having partly granted, there is absolutely no case for interference merely because there is no separate order passed in Notice of Motion No.3225 of 1996. In the result, as no ground is disclosed, the appeal fails and is dismissed with no order as to costs.

(R. M. S.KHANDEPARKAR, J.)

(DR.D. Y. CHANDRACHUD, J.)